

# Notice of Allowability

Application No.

10/651,228

Examiner

Katherine W. Mitchell

Applicant(s)

EVANS, DANIEL D.

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/22/2006.
2. ☒ The allowed claim(s) is/are 1,5,6,8-13,34,35,38-40 and 42-47.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 20060920.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
2. Authorization for this examiner's amendment was given in a telephone interview with Gordon Shields on Sept 20, 2006.
3. The application has been amended as follows:

#### **In the Claims:**

Claim 1 lines 5-6 have been amended to delete "including barbs extending outwardly and upwardly from the end plates".

Claim 1 line 9 has been amended to insert -- , said means comprising barbs extending outwardly and upwardly, from the end plates-- immediately after "sides of the trench".

Claim 12 line 2 has been amended to add -- when viewed at a cut perpendicular to the longitudinal axis--.

Claim 38, line 1, "the barb" has been changed to --the at least single barb--.

Claim 39, line 3 has been amended to add --, including providing at least one barb element extending upwardly and outwardly from each respective end plate--

Claim 41 has been deleted.

Claim 42 has been amended to depend from claim 39.

**Claims 43-47 have been added:**

--43. (new), The apparatus of claim 1 in which the center bridge portion has a generally rectangular cross section when viewed at a cut perpendicular to the longitudinal axis.--

--44. (new), The apparatus of claim 1 in which the center bridge portion comprises an upper flange portion, a lower flange portion, and a webbed section between said upper and lower flange portions.---

--45. (new) The apparatus of claim 1, wherein the end plates and center bridge are integrally formed as a single unit.---

--46. (new) The apparatus of claim 1, wherein the end plates and center bridge are separately formed and are assembled to form the retainer apparatus, each of said end plate bosses capable of receiving either end of said center bridge.---

--47. (new) The method of claim 39, wherein the length of the bridge element placed on the pair of end plates, in combination with the pair of end plates, is selected to correspond to the width of the trench. ---

The following is an examiner's statement of reasons for allowance: The prior art, Cogdill, previously applied, is indeed for insertion into wooden joists, as such, there is no motivation to modify the barbs to extend outwardly and upwardly. Note that "outwardly and upwardly" are both positively claimed, so that upward cannot be the same direction as outward. Note that the drawings and specification are clear that "upwardly" refers to the direction of the top opening of the trench, away from the soil bottom of the trench.

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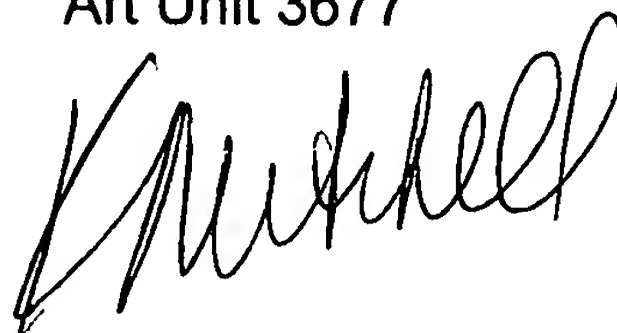
4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W. Mitchell whose telephone number is 571-272-7069. The examiner can normally be reached on Mon - Thurs 10 AM - 8 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Katherine W Mitchell  
Primary Examiner  
Art Unit 3677



Kwm

9/20/06 replaced 1/21/07  
(lost in mail?)